



Commonwealth of Virginia
Virginia Information Technologies Agency

MISCELLANEOUS COMPUTER PRODUCTS

Optional Use Contract

Date: July 10, 2003

Contract #: VA-020601-MCWH

Authorized User: State Agencies, Institutions and Public Bodies
as defined in the VPPA

Contractor: Micro Warehouse, Inc.
535 Connecticut Ave.
Norwalk, CT 06854

FIN: 13-4097187

Contact Person Josh Landsberger
(800) 696-1727, Ext. 7028
josh.landsberger@mwhse.com

Contract Term: June 7, 2003 – June 6, 2004

Payment: Net 30 days

For catalog please email: COVcatalog@warehouse.com

For Additional Information, Please Contact:

Contract Compliance Information:
Mrs. T. J. Hudson
Contracts Administrator
Phone: 804-371-5971
E-Mail: tj.hudson@vita.virginia.com
Fax: 804-371-5969

Technical Information:
Staff
Acquisition Services Division
Phone: 804-371-5900
E-Mail:
Fax: 804-371-5969

NOTES: Individual Commonwealth of Virginia employees are not authorized to purchase equipment or services for their personal use from this Contract.

For updates, please visit our Website at <http://www.oas.virginia.gov>

VIRGINIA INFORMATION TECHNOLOGIES AGENCY (VITA): Prior review and approval by VITA for purchases in excess of \$100,000.00 is required for State Agencies and Institutions only.

**MODIFICATION #1
TO
CONTRACT NUMBER VA-020601-MCWH
BETWEEN THE
COMMONWEALTH OF VIRGINIA
AND
MICRO WAREHOUSE INC**

This MODIFICATION #1 is an Agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth" or "VITA" (Virginia Information Technologies Agency), and MICRO WAREHOUSE INC, hereinafter referred to as "Contractor", relating to the modification of the above referenced contract. This MODIFICATION #1 is hereby incorporated into and made an integral part of Contract VA-020601-MCWH, (the Agreement).

The Virginia General Assembly passed legislation that abolishes the Department of information Technology as of July 1, 2003. All activities and functions of DIT will be consolidated into a new agency that will become the Virginia Information Technologies Agency. Therefore, for the purposes of this Agreement all references to either the Commonwealth, or DIT, or VITA, shall have the same meaning.

REFERENCES: Page 7 of 24, Paragraph 27, entitled "Term":


Both above referenced parties hereby agree to extend the term of Contract VA-020601-MCWH as specified in the above references, from July 1, 2003 through June 30, 2004.

The foregoing is the complete and final expression of the parties' agreement to modify Contract VA-020601-MCWH and cannot be modified, except by a writing signed by duly authorized representatives of both parties.


ALL OTHER TERMS AND CONVITAIONS REMAIN UNCHANGED.

**PERSONS SIGNING THIS CONTRACT ARE AUTHORIZED
REPRESENTATIVES OF EACH PARTY TO THIS CONTRACT AND
ACKNOWLEDGE THAT EACH PARTY AGREES TO BE BOUND BY THE TERMS
AND CONVITAIONS OF THE CONTRACT.**

MICRO WAREHOUSE INC

BY: 
NAME: Burl Williams
TITLE: Executive Vice President
DATE: _____

COMMONWEALTH OF VIRGINIA

BY: 
NAME: Jeff Davis
TITLE: Contracts Manager
DATE: 7.10.03

**MASTER AGREEMENT
CONTRACT VA-020601-MCWH
BETWEEN
THE COMMONWEALTH OF VIRGINIA
AND
MICRO WAREHOUSE, INC.**

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1. SCOPE OF AGREEMENT

This is an agreement (the "Agreement") between the Commonwealth of Virginia ("Commonwealth") and Micro Warehouse, Inc. (the "Contractor"), a Delaware corporation having its principal place of business at 535 Connecticut Avenue, Norwalk, CT, 06854. This Agreement contains the Contractual terms and conditions by which the Commonwealth and Contractor will establish a Master Contract for the use by State Agencies, Institutions, and other public bodies as defined in § 2.2-4301 of the Virginia Public Procurement Act (VPPA), and hereinafter referred to as "Authorized Users, to acquire Information Technology products and accessories ("Products") and software ("Software") pursuant to the Commonwealth's Request For Proposal #2002-008, (the "RFP") and the Contractor's proposal, in response thereto.

2. AGREEMENT MAKEUP

The documents comprising this Agreement, and their order of precedence in case of conflict, are: (1) the Contractor's cost proposal dated December 26, 2001 in response to the Commonwealth's RFP 2002-08; (2) this document, consisting of Terms and Conditions labeled 1 through 64, Attachment A, entitled Product Pricing and Attachment B entitled Lobbying Certificate; (3) the specific sections of the Contractor's proposal dated December 26, 2001 in response to the following specific sections of the Commonwealth's RFP 2002-08, sections: Section 1.27 entitled Participation in State Procurement Transactions by Small Businesses, and Businesses Owned by Women and Minorities, Section 4 entitled Mandatory Requirements, and Section 5 entitled Desirable Requirements; (4) the corresponding sections of the Commonwealth's RFP 2002-08; and (5) all executed Orders and Attachments referencing this Agreement. The foregoing documents represent the complete and final agreement of the parties with respect to the subject matter of this Agreement.

3. INTERPRETATION OF AGREEMENT

As used in this Agreement, "Software" shall include all related materials and documentation, whether in machine-readable or printed form.

Headings are for reference purposes only and shall not be considered in construing this Agreement.

If any term or condition of this Agreement is found to be illegal or unenforceable, it shall be severed, and the validity of the remaining terms and conditions shall not be affected.

Nothing in this Agreement shall be construed as an express or implied waiver of the Commonwealth's sovereign or Eleventh Amendment immunity, or as a pledge of its full faith and credit.

DIT will not sign or execute any additional Contract, license or other agreements containing Contractual terms and conditions as a result of this procurement. Any document signed by persons other than the Contracts Manager, DIT shall have no validity and the attached Terms and Conditions shall supercede all such agreements. Vendors should read and understand all of the terms and conditions prior to submission of a bid.

4. VENDORS MANUAL

This solicitation is subject to the provisions of the Commonwealth of Virginia *Vendors Manual* and any revisions thereto, which are hereby incorporated into this Contract in their entirety. A copy of the manual is normally available for review at the purchasing office and in addition, a copy can be obtained by calling the Division of Purchases and Supply (804) 786-3842, or by accessing the Department of General Services (DGS), Division of Purchases and Supply (DPS) Internet Home Page (www.dgs.state.va.us/dps/).

5. APPLICABLE LAWS AND COURTS

This solicitation and any resulting Contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The Contractor shall comply with all applicable federal, state and local laws, rules and regulations.

6. ANTI-DISCRIMINATION

By submitting their bids, bidders certify to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and §2.2-4311 of the Virginia Public Procurement Act. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the Contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that Contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (Code of Virginia, § 2.2-4343.1E).

In every Contract over \$10,000 the provisions in A. and B. below apply:

A. During the performance of this Contract, the Contractor agrees as follows:

- 1) The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- 2) The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
- 3) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.

B. The Contractor will include the provisions of A. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

7. ETHICS IN PUBLIC CONTRACTING

By submitting their proposals, offerors certify that their proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer or subcontractor in connection with their proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

8. IMMIGRATION REFORM AND CONTROL ACT OF 1986

By submitting their proposals, offerors certify that they do not and will not during the performance of this Contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.

9. DEBARMENT STATUS

By submitting their proposals, offerors certify that they are not currently debarred by the Commonwealth of Virginia from submitting bids or proposals on Contracts for the type of goods and/or services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.

10. ANTITRUST

By entering into a Contract, the Contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under said Contract.

11. MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS FOR IFBs AND RFPs

Failure to submit a proposal on the official state form provided for that purpose may be a cause for rejection of the proposal. Modification of or additions to the General Terms and Conditions of the solicitation may be cause for rejection of the proposal; however, the Commonwealth reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a proposal.

12. CLARIFICATION OF TERMS

If any prospective offeror has questions about the specifications or other solicitation documents, the prospective offeror should contact the buyer whose name appears on the face of the solicitation no later than five working days before the due date. Any revisions to the solicitation will be made only by addendum issued by the buyer.

13. PAYMENT

A. To Prime Contractor:

- 1) Invoices for items ordered, delivered and accepted shall be submitted by the Contractor directly to the payment address shown on the purchase order/Contract. All invoices shall show the state Contract number and/or purchase order number; social security number (for individual Contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).
- 2) Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
- 3) All goods or services provided under this Contract or purchase order, that are to be paid for with public funds, shall be billed by the Contractor at the Contract price, regardless of which public agency is being billed.
- 4) The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.

- 5) **Unreasonable Charges.** Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, Contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges that appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the Commonwealth shall promptly notify the Contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A Contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges that are not in dispute (*Code of Virginia*, § 2.2-4363).

B. To Subcontractors:

- 1) A Contractor awarded a Contract under this solicitation is hereby obligated:
 - (a) To pay the subcontractor(s) within seven (7) days of the Contractor's receipt of payment from the Commonwealth for the proportionate share of the payment received for work performed by the subcontractor(s) under the Contract; or
 - (b) To notify the agency and the subcontractor(s), in writing, of the Contractor's intention to withhold payment and the reason.
 - (c) The Contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the Contract) on all amounts owed by the Contractor that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (b) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier Contractor performing under the primary Contract. A Contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth.

14. PRECEDENCE OF TERMS

Paragraphs 4-14 of these General Terms and Conditions shall apply in all instances. In the event there is a conflict between any of the other General Terms and Conditions and any Special Terms and Conditions in this solicitation, the Special Terms and Conditions shall apply.

15. QUALIFICATIONS OF OFFERORS

The Commonwealth may make such reasonable investigations as deemed proper and necessary to determine the ability of the offeror to perform the services/furnish the goods and the offeror

shall furnish to the Commonwealth all such information and data for this purpose as may be requested. The Commonwealth reserves the right to inspect offeror's physical facilities prior to award to satisfy questions regarding the offeror's capabilities. The Commonwealth further reserves the right to reject any proposal if the evidence submitted by, or investigations of, such offeror fails to satisfy the Commonwealth that such offeror is properly qualified to carry out the obligations of the Contract and to provide the services and/or furnish the goods contemplated therein.

16. TESTING AND INSPECTION

The Commonwealth reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.

17. ASSIGNMENT OF CONTRACT

A Contract shall not be assignable by the Contractor in whole or in part without the written consent of the Commonwealth.

18. MODIFICATIONS

This Contract may be modified in accordance with §2.2-4309 of the Code of Virginia. Such modifications may only be made by the representatives noted below. No modifications to this Contract shall be effective unless it is in writing and signed by the duly authorized representative of both parties. No term or provision hereof shall be deemed waived and no breach excused unless such waiver or consent to breach is in writing.

Any Contract issued on a firm fixed price basis may not be increased more than twenty five percent (25%) or \$50,000.00 whichever is greater, without the approval of the Governor of the Commonwealth of Virginia or his authorized designee.

Authorized Representatives:

Commonwealth of Virginia:
Contracts Manager, DIT

Contractor:
Tara K. Barbieri
Sr. Manager, Contracts Dept.

19. DEFAULT

In case of failure to deliver goods or services in accordance with the Contract terms and conditions, the Commonwealth, after due oral or written notice, may procure them from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the Commonwealth may have.

20. TAXES

Sales to the Commonwealth of Virginia are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request, and can be obtained online at <http://www.tax.state.va.us/>. Deliveries against this Contract shall usually be free of Federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73-0076K.

21. RISK OF LOSS

The Contractor shall have the risk of loss or damage to all equipment until clear and unrestricted title to such equipment is transferred to the Commonwealth.

22. AVAILABILITY OF EQUIPMENT AND SOFTWARE

The Contractor represents and warrants that all Products were formally announced for marketing purposes before execution of this Agreement or, in the case of subsequent Orders, before execution of such Orders.

23. TITLE TO EQUIPMENT

Clear and unrestricted title to all equipment purchased under this Agreement shall pass to the Commonwealth upon payment of the purchase price.

24. PRODUCT CONDITION

All Products to be supplied by Contractor shall be new. All Products proposed by Contractor must have been approved by Underwriters Laboratories or a recognized equivalent certification agency.

26. OPERATIONAL RESTRICTIONS

Contractor warrants that, except as specifically agreed in writing all Products may be operated at any time for the convenience of the Commonwealth (exclusive of time required for preventive maintenance, remedial maintenance and approved engineering changes). Without limiting the foregoing, Contractor warrants that there are no restrictions as to consecutive hours or length of personnel shifts. The Commonwealth may make the Products available to any Commonwealth agency or any other users under conditions where such use is supervised by the Commonwealth.

27. TERM

This Agreement shall take effect on the date of its final execution by both parties, and continue for one (1) year, "initial Term". The Commonwealth at its sole discretion may extend this Agreement for four (4) additional one (1) year periods. The Commonwealth will issue a written

notification to the Contractor stating the extension period, 30 days prior to the expiration of any current Term.

28. USE OF BRAND NAMES

Unless otherwise provided in this solicitation, the name of a certain brand, make or manufacturer does not restrict offerors to the specific brand, make or manufacturer named, but conveys the general style, type, character, and quality of the article desired. Any article which the public body, in its sole discretion, determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The offeror is responsible to clearly and specifically identify the product being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable the Commonwealth to determine if the product offered meets the requirements of the solicitation. This is required even if offering the exact brand, make or manufacturer specified. Normally in competitive sealed bidding only the information furnished with the bid will be considered in the evaluation. Failure to furnish adequate data for evaluation purposes may result in declaring a bid nonresponsive. Unless the offeror clearly indicates in its proposal that the product offered is an equal product, such proposal will be considered to offer the brand name product referenced in the solicitation.

29. TRANSPORTATION AND PACKAGING

By submitting their proposals, all offerors certify and warrant that the price offered for FOB destination includes only the actual freight rate costs at the lowest and best rate and is based upon the actual weight of the goods to be shipped. Except as otherwise specified herein, standard commercial packaging, packing and shipping containers shall be used. All shipping containers shall be legibly marked or labeled on the outside with purchase order number, commodity description, and quantity.

30. INSURANCE

By signing and submitting a bid or proposal under this solicitation, the bidder or offeror certifies that if awarded the Contract, it will have the following insurance coverages at the time the Contract is awarded. For construction Contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §§ 2.2-4332 and 65.2-800 et seq. of the *Code of Virginia*. The bidder or offeror further certifies that the Contractor and any subcontractors will maintain these insurance coverages during the entire term of the Contract and that all insurance coverages will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

INSURANCE COVERAGES AND LIMITS REQUIRED:

- a. Worker's Compensation - Statutory requirements and benefits.
2. Employers Liability - \$100,000.

3. Commercial General Liability - \$500,000 combined single limit. Commercial General Liability is to include Premises/Operations Liability, Products and Completed Operations Coverage, and Independent Contractor's Liability or Owner's and Contractor's Protective Liability. The Commonwealth of Virginia must be named as an additional insured when requiring a Contractor to obtain Commercial General Liability coverage.

31. ANNOUNCEMENT OF AWARD

Upon the award or the announcement of the decision to award a Contract as a result of this solicitation, ASD will publicly post such notice on its website at <http://asd.state.va.us/> for a minimum of ten (10) days.

32. DRUG-FREE WORKPLACE

During the performance of this Contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific Contract awarded to a Contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the Contract.

33. NONDISCRIMINATION OF CONTRACTORS

A bidder, offeror, or Contractor shall not be discriminated against in the solicitation or award of this Contract because of race, religion, color, sex, national origin, age, or disability or against faith-based organizations. If the award of this Contract is made to a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this Contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

34. BREACH

The Contractor shall be deemed in breach of this Agreement if the Contractor (a) fails to make any Product or Service ready for acceptance testing by the specified delivery date; (b) repeatedly fails to respond to requests for maintenance or other required service within the time limits set forth in this Agreement; (c) fails to comply with any other term of this Agreement and fails to cure such noncompliance within ten days (or such greater period as is acceptable to the Commonwealth) following Contractor's receipt of a Show Cause Notice identifying such noncompliance; or (d) fails to provide a written response to the Commonwealth's Show Cause Notice within ten days after receiving same.

The Contractor shall not be in breach of this Agreement if its default was due to causes beyond the reasonable control of, and occurred without any fault or negligence on the part of, both the Contractor and its subcontractors. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Commonwealth in either its sovereign or Contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather.

In the event of breach, in addition to any other remedies provided by law, the Commonwealth may cancel its obligations with respect to any or all unaccepted Products or Services. All costs for deinstallation and return of Products shall be borne by the Contractor. In no event shall any failure by the Commonwealth to exercise any remedy available to it be construed as a waiver of or consent to any breach.

35. NON-APPROPRIATION

All funds for payment of equipment, software or services ordered under this Contract are subject to the availability of legislative appropriation for this purpose. In the event of non-appropriation of funds by the Legislature for the items under this Contract, the Commonwealth will terminate this Contract for those goods or services for which funds have not been appropriated. Written notice will be provided to the Contractor as soon as possible after legislative action is completed.

If any purchases are to be supported by federal funding, and such funding is not made available, the Commonwealth may terminate this Contract for goods or services dependent on such federal funds without further obligation.

36. CONTRACTUAL RECORDS

The Contractor shall make all Contractual books and records and other documents relating to matters under this Agreement available to the Commonwealth and its designated agents for purposes of audit and examination for a period of five years after final payment.

Contractual records include, but are not limited to, this Agreement and all executed Orders, Attachments, modifications, invoices, and correspondence between the parties to this Agreement.

37. PRIME CONTRACTOR RESPONSIBILITY

If the Contractor's proposal includes any goods or services to be supplied by another party, the Contractor agrees as follows:

- a. The Contractor shall act as prime Contractor for the procurement and maintenance of the entire proposed configuration and shall be the sole point of contact with regard to all obligations under this Agreement.
- b. The Contractor hereby represents and warrants that the Contractor has made such other party aware of the proposed use and disposition of the other party's product or services, and that such other party has agreed in writing that it has no objection thereto.

38. PATENT/COPYRIGHT PROTECTION

Contractor, at its own expense, shall defend any suit brought against the Commonwealth for the infringement of patents, copyrights or trade secrets enforceable in the United States if the claim of infringement is alleged to relate to or arise from the Contractor's or Commonwealth's use of any equipment, software, materials or information prepared, developed or delivered in connection with performance of this Agreement. In such suit, Contractor shall indemnify the Commonwealth, its agents, officers and employees for any loss, liability or expense incurred as a result of such suit.

The purchasing agency shall notify the Contractor of such suit within a reasonable time after learning of it and shall give the Contractor the full right and opportunity to conduct the defense of the suit, subject however to the requirements of Section 2.2-510 and Section 2.2-514 of the Code of Virginia or any successor statute. If principles of governmental or public law are involved, the Commonwealth may, at its option and expense, participate in the defense of the suit.

The Contractor shall not be required to indemnify the Commonwealth for liability arising solely out of the Commonwealth's own specifications or design or solely from the combination of equipment or software furnished hereunder with any equipment or software not supplied by the Contractor.

If, any Product or Service becomes, or in the Contractor's opinion, is likely to become, the subject of a claim of infringement, Contractor may, at its option, provide noninfringing substitutes that are satisfactory to the Commonwealth, or at Contractor's option and expense, may obtain the right for the Commonwealth to continue the use of such Product or Service.

If the use of such equipment or software by the Commonwealth is prevented by permanent injunction or by Contractor's failure to procure the right for the Commonwealth to continue using the software, the Contractor agrees to take back the infringing equipment, software, materials or information and refund the total amount the Commonwealth has paid Contractor under this Agreement, less one half (1/2%) percent of the total paid for each month of use by the

Commonwealth. This obligation is in addition to the obligations cited in the first four subparagraphs above.

39. CONTRACTUAL DISPUTES

In accordance with Section 2.2-4363 of the Code of Virginia, Contractual claims, whether for money or other relief, shall be submitted in writing to the purchasing agency no later than sixty (60) days after final payment; however, written notice of the Contractor's intention to file such claim must be given to such agency at the time of the occurrence or beginning of the work upon which the claim is based. Pendency of claims shall not delay payment of amounts agreed due in the final payment. The purchasing agency shall render a final decision in writing within thirty (30) days after its receipt of the Contractor's written claim.

The Contractor may not invoke any available administrative procedure under Section 2.2-4365 of the Code of Virginia nor institute legal action prior to receipt of the purchasing agency's decision on the claim, unless that agency fails to render its decision within thirty (30) days. The decision of the purchasing agency shall be final and conclusive unless the Contractor, within six (6) months of the date of the final decision on the claim, invokes appropriate action under Section 2.2-4364, Code of Virginia or the administrative procedure authorized by Section 2.2-4365, Code of Virginia.

The Department of Information Technology, its officers, agents and employees, including, without limitation, the Contracts Manager, are executing this Agreement and any Orders issued hereunder, solely in its or their statutory and regulatory capacities as agent for the Commonwealth agency purchasing and receiving the goods or services identified in Attachment "A" to this Agreement or on the subsequent Order in question and need not be joined as a party to any dispute that may arise thereunder.

In the event of any breach by the Commonwealth, Contractor's remedies shall be limited to claims for damages and Prompt Payment Act interest and, if available and warranted, equitable relief, all such claims to be processed pursuant to this Section. In no event shall Contractor's remedies include the right to terminate any license or support services hereunder.

40. LIMITATION OF LIABILITY

To the maximum extent permitted by applicable law, the Contractor will not be liable under this Contract for any indirect, incidental, special or consequential damages, or damages from loss of profits, revenue, data or use of the supplies, equipment and/or services delivered under this Contract. This limitation of liability will not apply, however, to liability arising from: (a) personal injury or death; (b) defect or deficiency caused by willful misconduct or negligence on the part of the Contractor; or (c) circumstances where the Contract expressly provides a right to damages, indemnification or reimbursement.

41. PERIODIC PROGRESS REPORTS/INVOICES

For Contracts requiring the submission of periodic Contract performance progress reports or program status reports, the offeror will include a section on involvement of small businesses and businesses owned by women and minorities. This section will specify the actual dollars Contracted to-date with such businesses, actual dollars expended to-date with such businesses and the total dollars planned to be contracted for with such businesses on this Contract. This information shall be provided separately for small businesses, minority-owned businesses and women-owned businesses.

If the Contract does not require the submission of periodic progress reports, the offeror will provide the above required information on actual involvement of small businesses and businesses owned by minorities and women as part of their periodic invoices.

42. FINAL ACTUAL INVOLVEMENT REPORT

The Contractor will submit, prior to completion or at completion of the Contract and subject to final payment, a report on the actual dollars spent with small businesses and businesses owned by women and minorities during the performance of the Contract. At a minimum, this report shall include for each firm Contracted with and for each such business class (i.e., small, minority-owned, women-owned) the total actual dollars spent on this Contract, the planned involvement of the firm and business class as specified in the proposal, and the actual percent of the total estimated Contract value. A suggested format is as follows:

FIRM NAME ADDRESS AND PHONE NUMBER	TYPE GOODS/ SERVICES	ACTUAL DOLLARS	PLANNED DOLLARS	% OF TOTAL CONTRACT
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
Totals for Business Class		_____	_____	_____

43. BUY OUTS - THIRD PARTY ACQUISITION OF CONTRACTOR'S SOFTWARE

Contractor shall promptly notify the DIT Contracts Manager in the event that the intellectual property in or business associated with any Product or Service covered by this Agreement is acquired from the Contractor by a third party or in the event the Contractor or substantially all of its assets is acquired by a third party.

The terms and conditions of this Agreement including but not limited to the license rights and related services shall not be affected in such event identified above even if the successor or assignee already has an agreement with the Commonwealth covering products and services of the type covered by this Agreement. The Contractor's responsibilities under this Agreement

shall not be released by such acquisition. In addition, prior to any acquisition, Contractor shall obtain for the Commonwealth's benefit the assignee's agreement to fully perform this Agreement.

The successor or assignee, by taking any benefit, including acceptance of payment, under this Agreement ratifies this Agreement.

The failure of any successor or assignee of the Contractor to acknowledge its obligation to adhere to the terms and conditions of this Agreement shall constitute a breach of this Agreement for which the successor or assignee and the original Contractor shall be liable and subject to debarment.

44. COMPLIANCE WITH FEDERAL LOBBYING ACT

A. Contractor shall not, in connection with this Agreement, engage in any activity prohibited by 31 U.S.C.A. Section 1352 (entitled "Limitation on use of appropriated funds to influence certain Federal Contracting and financial transactions") or by the regulations issued from time to time thereunder (together, the "Lobbying Act"), and shall promptly perform all obligations mandated by the Lobbying Act in connection with this Agreement, including, without limitation, obtaining and delivering to the Commonwealth all necessary certifications and disclosures.

B. Contractor is hereby advised that a significant percentage of the funds used to pay Contractor's invoices under this Agreement may be federal funds. Under no circumstances shall any provision of this Agreement be construed as requiring or requesting the Contractor to influence or attempt to influence any person identified in 31 U.S.C.A. Section 1352 (a) (1) in any matter.

C. A representative of Contractor shall sign the certification attached as Attachment "B" and deliver such certification to the Commonwealth simultaneously with the execution and delivery of this Agreement. Contractor shall have the certification signed by a representative with knowledge of the facts and shall fulfill the promises of undertakings set forth in the certification.

45. NONVISUAL ACCESS TO TECHNOLOGY

All information technology which, pursuant to this Agreement, is purchased or upgraded by or for the use of any State agency or institution or political subdivision of the Commonwealth (the "Technology") shall comply with the following nonvisual access standards from the date of purchase or upgrade until the expiration of this Agreement:

(i) effective, interactive control and use of the Technology shall be readily achievable by nonvisual means;

(ii) the Technology equipped for nonvisual access shall be compatible with information technology used by other individuals with whom any blind or visually impaired user of the Technology interacts;

(iii) nonvisual access technology shall be integrated into any networks used to share communications among employees, program participants or the public: and

(iv) the technology for nonvisual access shall have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired.

Compliance with the foregoing nonvisual access standards shall not be required if the head of the using agency, institution or political subdivision determines that (I) the Technology is not available with nonvisual access because the essential elements of the Technology are visual and (ii) nonvisual equivalence is not available.

Installation of hardware, software, or peripheral devices used for nonvisual access is not required when the Technology is being used exclusively by individuals who are not blind or visually impaired, but applications programs and underlying operating systems (including the format of the data) used for the manipulation and presentation of information shall permit the installation and effective use of nonvisual access software and peripheral devices.

If requested, the Contractor must provide a detailed explanation of how compliance with the foregoing nonvisual access standards is achieved and a validation of concept demonstration.

The requirements of this Paragraph shall be construed to achieve full compliance with the Information Technology Access Act, 2.2-3500 through 2.2-3504 of the Code of Virginia.

46. CONTRACTOR'S REPORT OF SALES

The Contractor must report the quarterly dollar value, in U.S. dollars and rounded to the nearest whole dollar, of all sales under this Contract by calendar quarter; i.e., January through March, April through June, July through September, and October through December. The dollar value of a sale is the price paid by the user for products and services on a Contract order as recorded by the Contractor. The reported Contract sales value must include the Industrial Funding Adjustment, as delineated in paragraph entitled "Industrial Funding Adjustment". The Contractor shall provide this report in hard copy to the Controller, DIT, and a copy of the report to the Contracts Manager, DIT, both within 30 days after the end of each quarterly reporting period as defined herein. The report must show each individual item and quantities purchased and the purchaser. The report is required to be hard copy. DIT may at a later time, agree to an electronic version of the report, however, in lieu of any express agreement by both parties as to the electronic format, the Commonwealth will only accept a hardcopy version. The Contractor shall define "sale" prior to the first reporting period and then shall maintain that definition through out the term of this Agreement. Sale may be defined as; 1) when the Commonwealth pays the purchase price, or 2) when the Commonwealth accepts the Products or 3) other as defined by the Contractor.

47. INDUSTRIAL FUNDING ADJUSTMENT

The Contractor must pay DIT, an Industrial Funding Adjustment (IFA). The Contractor must remit the IFA within 30 days after the end of each quarterly reporting period as established in the clause entitled "Contractor's Report of Sales". The IFA equals two percent (2%) of the total quarterly sales reported. Contractor shall remit the IFA together with a copy of the Contractor's Report of Sales as delineated in the paragraph herein entitled "Contractor's Report of Sales". The IFA reimburses the Commonwealth and defrays the costs for IT procurement and the administration of the subsequent awards. The IFA amount due must be paid by check with identification of "Contract number", "report amounts", and "report period", on either the check stub or other remittance material. DIT may at its discretion, agree to an electronic funds transfer, in lieu of a check, however in the absence of an express written agreement from DIT that validates agreement, then the payment shall be made by check as described herein made payable to the Controller, DIT.

If the full amount of the IFA is not paid within thirty (30) calendar days after the end of the applicable reporting period, it shall constitute a Contract debt to the Commonwealth of Virginia, and the State may exercise all rights and remedies available under law. Failure to submit sales reports, falsification of sales reports, and or failure to pay the IFA in a timely manner may result in termination or cancellation of this Contract. Willful failure or refusal to furnish the required reports, falsification of sales reports, or failure to make timely payment of the IFA constitutes sufficient cause for terminating this Contract for default.

It is the intent of the Commonwealth to capture 2% of all sales, including temporary reduced pricing, fire sales, one time sales, trade ins, promotional items that have been marked down and all sales to the Commonwealth under this Agreement.

48. eVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION:

The eVA Internet electronic procurement solution, web site portal www.eva.state.va.us, streamlines and automates government purchasing activities in the Commonwealth. The portal is the gateway for vendors to conduct business with state agencies and public bodies.

All vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution either through the eVA Basic Vendor Registration Service or eVA Premium Vendor Registration Service, and complete the Ariba Commerce Services Network registration.

- a. eVA Basic Vendor Registration Service: \$25 Annual Fee plus a Transaction Fee of 1% per order received. The maximum transaction fee is \$500 per order. eVA Basic Vendor Registration Service includes electronic order receipt, vendor catalog posting, on-line registration, and electronic bidding, as they become available.
- b. eVA Premium Vendor Registration Service: \$200 Annual Fee plus a Transaction Fee of 1% per order received. The maximum transaction fee is \$500 per order. eVA

Premium Vendor Registration Service includes all benefits of the eVA Basic Vendor Registration Service plus automatic email or fax notification of solicitations and amendments, and ability to research historical procurement data, as they become available.

- c. Ariba Commerce Services Network Registration. The Ariba Commerce Services Network (ACSN) registration is required and provides the tool used to transmit information electronically between state agencies and vendors. There is no additional fee for this service.

Note: Vendors are strongly encouraged to register your company prior to submitting a bid or offer. Failure to register will result in your bid or offer being found non-responsive and rejected. All vendors must register in both the eVA and the Ariba Commerce Services Network Vendor Registration Systems.

49. ORDERS

“Authorized Users” of this Contract may order Products and Software from this Contract by one of the following Order methods:

- A. Purchase Order: An official Purchase Order form issued by an Authorized User.
- B. Delivery Order (DO): A DO issued by the Acquisition Services Division, DIT.
- C. Charge/Credit Card:
 - 1) Any order/payment transaction processed through the Commonwealth’s contract with American Express (AMEX). Each Order must not exceed \$5,000, or the then current charge card limit. Payment will be made by AMEX to Contractor within three (3) business days.
 - 2) Any other order/payment charge or credit card process, such as AMEX, MASTERCARD, or VISA, under contract for use by an Authorized User.

This ordering authority is limited to issuing orders for the Products/Software available under this Agreement. Under no circumstances shall any Authorized User of the Commonwealth have the authority to modify this Agreement.

Contractor acknowledges that the forgoing is not intended to preclude the Commonwealth from issuing Orders against subject Contract as it so chooses.

50. INVOICING

The Contractor shall remit each invoice to the ordering entity, or Authorized User. The Contractor shall issue monthly invoices, identifying at a minimum the components listed below.

- a. serial number if applicable
- b. quantities of merchandise
- c. date ordered
- d. date delivered
- e. listing of returns

51. DELIVERY DATE

The Contractor shall deliver the Products, and Software ready for testing, by the delivery date specified in any executed Attachment or Order referencing the Agreement, or within five (5) days After Receipt of the Order (ARO) if no date is specified. If delivery of all Products and Software is not completed within the time specified, the Commonwealth may cancel the Agreement or any individual Order without further obligation. The Commonwealth may postpone any delivery date by notifying the Contractor at least seven (7) days prior to the delivery date. However, the delivery date shall not be postponed more than a total of thirty (30) days.

52. TERMINATION FOR CONVENIENCE

The Commonwealth may terminate this Contract in whole or in part, for Convenience at any time by submitting to the Contractor, a writing, sixty (60) days prior to the date of termination. The Commonwealth shall be obligated for all outstanding Orders, as per Contract, subsequent to this termination. The Commonwealth shall not be obligated for any other costs in the event of Termination for Convenience.

53. PRODUCT WARRANTY

All Products shall have a ninety (90) day return to vendor/manufacture warranty. For any Product that does not meet any published specification from the vendor/manufacture, the Authorized User may return the Product for a full refund during this ninety (90) day period. The ninety (90) day period commences upon a successful acknowledged delivery and continues unabated for ninety consecutive days.

54. MOVEMENT OF PRODUCTS AND SOFTWARE

- a. Products and Software may be moved from one Commonwealth location at the convenience of the Authorized User.
- b. There shall be no charge to the Commonwealth in the event of transfer of licensed Software Product(s) to another location and the licensed Software Product (s) is to be discontinued at the old location.

55. SUPPLIES

Authorized charges do not include operational supplies (e.g. paper, tape, etc.) unless such supplies are specifically identified in the Schedule. All supplies used by the State shall conform

to the Contractor's published specifications provided to State at time of equipment installation. The State reserves the right to acquire such supplies from any Contractor of its choice.

56. MANUALS

Contractor shall supply an operations manual for each Product, and in the case of custom-developed deliverables, shall also provide a manual describing the functions, characteristics and operating capabilities that may be expected of such deliverables.

57. CONTRACTOR'S WARRANTY POINT-OF-CONTACT

The Contractor shall provide the Commonwealth with designated points-of-contact and make arrangements to enable its Warranty representative to receive such notification or other continuous telephone coverage to permit the Commonwealth to make such contact.

58. LICENSED SOFTWARE

The Contractor represents and warrants that it is the sole owner of the Software/firmware or, if not the owner, has received all proper authorizations from the owner to license the software/firmware product, and has the full right and power to grant the rights contained in this Contract. Contractor further warrants and represents that the software/firmware product is of original development, and that the package and its use will not violate or infringe upon any patent, copyright, trade secret or other property right of any other person.

59. SOFTWARE WARRANTY

All Software shall have a ninety (90) day return to vendor/manufacture warranty. For any Product that does not meet any published specification from the vendor/manufacture, the Authorized User may return the Product for a full refund during this ninety (90) day period. The ninety (90) day period commences upon a successful acknowledged delivery and continues unabated for ninety consecutive days.

60. WARRANTY AGAINST SHUTDOWN DEVICES

Contractor warrants that the Products provided under this Agreement shall not contain any lock, counter, CPU reference, virus, worm or other device capable of halting operations or erasing or altering data or programs. Contractor further warrants that neither the Contractor, nor its agents, employees or subcontractors shall insert any such device after execution of this Agreement.

61. TERM OF SOFTWARE LICENSE

All licenses granted under this Agreement are purchased on a non-exclusive, irrevocable perpetual license basis and shall commence upon the acceptance of the software Product by the Commonwealth. Notwithstanding the foregoing, the Commonwealth may terminate the license at anytime. All licenses granted to the Commonwealth are for the use of the software Product at the Commonwealth's computing facilities at the sites identified in any executed Attachment or

Order referencing this Agreement. This license is perpetual and in no event shall Contractor's remedies for any breach of this Agreement include the right to terminate any license or support services hereunder.

62. SOFTWARE UPGRADES

The Commonwealth shall be entitled to receive any and all upgraded versions of the Software Product that Contractor may make available in the future including any third party Software Product provided by the Contractor under this Agreement. The charge to the Commonwealth for Third Party Software purchased throughout the Contract term shall not exceed the applicable discount for Software as stated in the Contract.

63. DISPOSITION OF SOFTWARE

Unless otherwise instructed by the Contractor, the State shall erase, destroy or otherwise render unusable the Software Product within thirty (30) days from the date of the Commonwealth's termination of the license. A letter certifying this destruction shall be sent to the Contractor as soon as this process is completed. The Commonwealth shall have the right to retain one copy for archival purposes.

64. COMMONWEALTH'S RIGHTS TO COMPUTER SOFTWARE

Notwithstanding anything to the contrary in this Agreement, the Commonwealth shall have:

- a. Unlimited use of the Software on the machines for which it is acquired and on any replacement equipment;
- b. Use of such Software with a backup system if the system(s) for which it was acquired is for any reason, inoperative or during an emergency, or the performance of engineering changes in features or model;
- c. The right to use such Software at any Commonwealth installation to which the machine(s) may be transferred by the Commonwealth;
- d. The right to copy such software for safekeeping or backup purposes;
- e. The right to modify such Software Product or combine it with other programs or material at the Commonwealth's risk; and
- f. The Commonwealth shall have the right to reproduce any and all physical documentation supplied under the terms of this Agreement, provided, however, that such reproduction shall be for the sole use of the Commonwealth and shall be subject to the same restrictions or use and disclosure as are contained elsewhere in this Agreement.

Nothing contained herein shall be construed to restrict or limit the Commonwealth's rights to use any technical data which the Commonwealth may already possess or acquire under proper authorization from other sources.

PERSONS SIGNING THIS CONTRACT ARE AUTHORIZED REPRESENTATIVES OF EACH PARTY TO THIS CONTRACT AND ACKNOWLEDGE THAT EACH PARTY AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THE CONTRACT.

MICRO WAREHOUSE, INC.

BY: 

NAME: William Shafley

TITLE: President / Chief Operating Off.

DATE: June 26, 2002

COMMONWEALTH OF VIRGINIA

BY: 

NAME: Joe A. Parr

TITLE: Contracts Engineer

DATE: 7/1/02

ATTACHMENT "A"
TO
AGREEMENT VA-020601-MCWH

PRODUCT PRICING

Attachment "A" is hereby incorporated into and made an integral part of Agreement Number VA-020601-MCWH between Micro Warehouse, Inc. and the Commonwealth of Virginia. In the event of any inconsistency between this Attachment "A" and Agreement VA-020601-MCWH, the provisions of Agreement VA-020601-MCWH shall control.

PRICING:

The table below delineates the Commonwealth discounts for the various product categories contained in the catalog provided by the Contractor:

Product Category	Discount from list price
CPU's	2.0%
Monitors	2.0%
Memory	15.0%
Printers	2.0%
Storage	4.0%
Software	3.0%
Supplies	7.0%
Networking	3.0%
Cables	15.0%
Other	5.0%

The Commonwealth price is obtained by applying the appropriate discount to the catalog price of the item. The Contractor shall distribute its printed version of the Commonwealth catalog every four to six weeks. The Contractor shall mail the printed version of the catalog to all Authorized Users that are currently customers of the Contractor and to all Authorized Users that request a catalog. The Contractor shall also maintain an electronic version of the Commonwealth catalog on its web site.

ORDERS:

Authorized Users may place orders up to \$50,000.00 per order under the Contract. Orders may be placed electronically through the Contractor's web site or by telephone or facsimile.

SHIP / TO BILL TO ADDRESSES:

The shipping and billing addresses will be included on individual orders referencing this Contract.

DELIVERY SCHEDULE:

All shipments shall be FOB destination. Shipping charges and the IFA shall be included in the discounted price of the products. No additional charges will be allowed. The delivery schedule shall be established by individual order, but shall not exceed five (5) days after receipt of order (ARO) by the Contractor. The Authorized User, at its option, may postpone the delivery date by notifying the Contractor at least seven (7) days prior to the delivery date. However, the delivery date shall not be postponed more than a total of thirty (30) days.

DIT POINTS OF CONTACT:Contract Compliance Information:

Mrs. T. J. Hudson, CPPB, VCO
Contracts Administrator
(804) 371-5971
(804) 371-5969 (Fax)
thudson@dit.state.va.us

Technical Information:

Joe A. Parr, CPPO, VCO
Contract officer
(804) 371-5991
(804) 371-5969 (Fax)
jparr@dit.state.va.us

CONTRACTOR POINTS OF CONTACT:

Josh Landsberger
VA Account Manager
800-696-1727 x7028
josh.landsburger@mwhse.com

Sean Hart
State and Local Sales Manager
800-696-1727 x7227
harts@mwhse.com

Brad VanGemert
Program Manager
800-696-1727 x7093
vangemertb@mwhse.com

ATTACHMENT "B"
TO
AGREEMENT VA-020601-MCWH

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief, that:

- a. No Federal appropriated funds have been paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal Contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative Agreement, and the extension, continuation, renewal, amendment, or modification of any Federal Contract, grant, loan, or cooperative Agreement.
- b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal Contract, grant, loan, or cooperative Agreement, the undersigned shall complete and submit standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- c. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and Contracts under grants, loans and cooperative Agreements) and that all subrecipients shall certify and disclose accordingly.

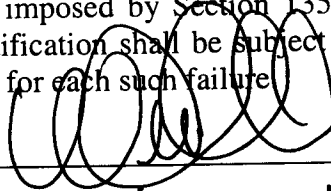
This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Signature: _____

Printed Name: _____

Organization: _____

Date: _____



William A. Shaffer

Micro Warehouse

6/18/02